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Sentencing

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

16 CR 781 (RJS)

5 GARFIELD GREEN,

6 Defendant.

7 -----x

8 New York, N.Y.

9 July 28, 2017

2:39 p.m.

10 Before:

11 HON. RICHARD J. SULLIVAN

12 District Judge

13  
14 APPEARANCES

15 JOON H. KIM

Acting United States Attorney for the  
Southern District of New York

16 MARGARET GRAHAM

17 Assistant United States Attorney

18 CESAR DE CASTRO

Attorney for Defendant

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(In open court; case called)

MS. GRAHAM: Good afternoon, your Honor.

Margaret Graham on behalf of the government.

THE COURT: Good afternoon, Ms. Graham.

For the defendant.

MR. DE CASTRO: For Mr. Green, who is seated to my left, Cesar de Castro. Good afternoon, Judge.

THE COURT: Mr. de Castro, Mr. Green, good afternoon.

So we're here for sentencing. Mr. Green pled guilty before me back on March 27.

I want to go over with everyone what I have received and reviewed in connection with sentencing. If I've left anything out, of course let me know.

So, first of all, I have reviewed the transcript of the guilty plea that took place on March 27. I was here for this. I presided. But I think it's always a good practice to review what was said. So I've done that.

I've also reviewed the presentence report that was prepared by the probation department. That report is dated June 16. It is a 25-page report, 24 pages plus a cover page. It includes a sentencing recommendation.

I've also reviewed the sentencing submission of Mr. de Castro. Actually I guess I have two versions of it. I have one dated June 25 -- excuse me, July 25 and another that's dated July 14. They are largely the same but one makes express

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1 reference to attempts at cooperation and the other does not.  
2 So I guess the reason is there's a desire not to put the  
3 attempts at cooperation on the docket.

4 Is that what it was?

5 MR. DE CASTRO: Temporarily, Judge, yes. That's one  
6 issue we wanted to discuss.

7 THE COURT: I've reviewed both. Each had submissions  
8 attached to it or letters attached to it. I've read those.  
9 They're from friends and family members. They are very  
10 thoughtful letters. So I've reviewed those.

11 I've then reviewed the government's sentencing  
12 submission which is dated July 24. That submission is a  
13 four-page, single-spaced letter. It's really three pages.  
14 There's a long break on three and then a very short paragraph  
15 on four.

16 So that's what I have. Is there anything else I've  
17 overlooked?

18 Ms. Graham?

19 MS. GRAHAM: Your Honor, nothing that you've  
20 overlooked, but we have for you today an order of restitution  
21 which we have also shared with defense.

22 THE COURT: Restitution, not forfeiture or --

23 MS. GRAHAM: No forfeiture. There was a preliminary  
24 consent order submitted to you at the plea to become final  
25 today.

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1 THE COURT: Do I have the -- I have a consent  
2 preliminary order of forfeiture but I don't see the original.  
3 Do you believe I've got the original?

4 MS. GRAHAM: I will check, your Honor.

5 THE COURT: I have a copy.

6 MS. GRAHAM: Which is fine for docketing purposes.  
7 But I will certainly check.

8 THE COURT: It has signature lines for everybody  
9 including me but also Mr. Green, his lawyer, and the government  
10 and I don't seem to have the executed version.

11 MS. GRAHAM: Yes. I do have that here.

12 THE COURT: So hand that up with the restitution  
13 order.

14 MS. GRAHAM: Yes.

15 THE COURT: Now I notice in the presentence report  
16 there was a reference to the victim but there was no statement  
17 from the victim, no victim statement. There was a statement  
18 from his -- the victim's brother and that person is also  
19 technically a victim because they are president or the head of  
20 the company that was victimized. But the individual who had  
21 the gun basically drawn on him, placed against his head, that  
22 person has not submitted anything.

23 Each victim -- all victims have a right to address the  
24 court. So, I'm curious. Have the victims been contacted?  
25 Have they indicated whether they wish to be here?

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1 MS. GRAHAM: Yes, your Honor. I spoke with Carl, who  
2 was the actual victim, on the phone. Carl and Franz, who is  
3 the brother and owner of the company, were both contacted by  
4 our victim witness unit and were sent notification letters,  
5 including of this proceeding, informing them of the sentencing  
6 and their right to be here.

7 THE COURT: They have declined to appear.

8 Have you had any contact with them directly?

9 MS. GRAHAM: Yes. I spoke with Carl directly. He has  
10 not submitted an official statement or decided to come today.

11 THE COURT: Mr. de Castro, is there anything else that  
12 you think I should have reviewed that I haven't mentioned?

13 MR. DE CASTRO: No, Judge.

14 THE COURT: So, Mr. Green, let me remind you how this  
15 is going to go. When you pled guilty before me I explained the  
16 general process. But you probably had a lot going on in your  
17 mind that day. So I want to just remind you.

18 Before I impose a sentence, I have to consider a lot  
19 of different factors. One of the factors that I have to  
20 consider is United States Sentencing Guidelines. So we're  
21 going to talk about that. There are some other factors that I  
22 also have to consider. I'll remind you what those are. But  
23 we'll talk about those things.

24 I'm first now going to ask you about the presentence  
25 report that was prepared by the probation department. I want

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1 to make sure you had a chance to see that and had a chance to  
2 discuss it with your attorney, Mr. de Castro.

3 So I don't know if you have a copy nearby.

4 MR. DE CASTRO: Yes, right here.

5 THE COURT: You've seen that document before today?

6 THE DEFENDANT: Yes, I did your Honor.

7 THE COURT: And you discussed it with Mr. de Castro?

8 THE DEFENDANT: Yes, I did.

9 THE COURT: And, Mr. de Castro, you've seen it and  
10 discussed it with your client?

11 MR. DE CASTRO: Yes.

12 THE COURT: Do you have any objections to what's in  
13 the report?

14 MR. DE CASTRO: No objections.

15 THE COURT: Ms. Graham, do you have any objections to  
16 what's in the report.

17 MS. GRAHAM: No, your Honor.

18 THE COURT: So, we're going to begin with the  
19 sentencing guidelines and, as I told you before, the sentencing  
20 guidelines are a big book, a book that's put out by a  
21 commission, the United States Sentencing commission. And that  
22 commission consists of some judges and some lawyers and some  
23 experts in the field of criminal law.

24 So the point of this book, the purpose of this book is  
25 to give guidance to judges like me. So for every crime or type

1 of crime there's a chapter in this book, and the judge is  
2 directed to go to the chapter that relates to the crimes in the  
3 case and then the judge makes findings according to what's in  
4 the book.

5           So the book might direct the judge to make a finding  
6 in the case of a robbery about whether force was used, whether  
7 guns were used, whether anybody was injured, whether -- how  
8 much money was taken or what the value of the loss was. And  
9 depending on the answers to those questions, the judge is  
10 directed to assign points. And it's a fairly -- it's a fairly  
11 simple, basically accounting system, just adding and  
12 subtracting points. And at the end of that process the judge  
13 comes up with a number. That number is referred to as the  
14 offense level.

15           The judge then goes to another chapter in this book  
16 and that's the chapter that relates to criminal history. And,  
17 not surprisingly, people who have committed crimes before,  
18 people who have gone to prison for those crimes, they will  
19 typically be treated more harshly than people who have no prior  
20 convictions.

21           So the judge will make findings about whether there  
22 were prior convictions; if so, when and for how long the  
23 sentence was. And depending on the answers to those questions,  
24 the judge then assigns points and comes up with another number.  
25 That number is referred to as the criminal history category.

1           There are six criminal history categories. Category I  
2 is the lowest and least serious. Category VI is the highest  
3 and most serious.

4           And then with those two numbers that I've talked  
5 about, the offense level on one hand and the criminal history  
6 category on the other, the judge goes to the back of this book  
7 where there's a grid or a table.

8           It might be hard for you to see, but I'm sure  
9 Mr. de Castro has gone over it with you. It's basically just a  
10 table. And there's a column here on the far left. That's the  
11 offense level column. It's numbered 1 through 43. And so the  
12 judge goes down that column and keeps going until he or she  
13 gets to the number that the judge found to be the offense level  
14 in the case.

15           The judge then will stop there and go across these  
16 other columns from left to right each of which reflect a  
17 criminal history category. And the judge keeps going until he  
18 gets to the criminal history category that the judge found to  
19 be appropriate. And where the judge's finger finally stops on  
20 this chart, that is the range in terms of months that, in the  
21 view of the commission that prepared this book, would be  
22 appropriate.

23           So, that's how the book works. Now, it's not a  
24 mandatory book. I don't have to follow this book. I can go  
25 higher. I can go lower. But I do have to consider the book.



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1 And I have to make my findings about the offense level and the  
2 criminal history category as part of the sentencing. I have to  
3 make those findings.

4 Okay?

5 THE DEFENDANT: All right.

6 THE COURT: Do you have any questions about that?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: So we're going to spend a few minutes  
9 talking about that because it's sort of the starting point even  
10 though it's not mandatory. All right.

11 So in this case I don't think there's any real dispute  
12 about how the guidelines apply here. The presentence report  
13 sets forth the guidelines on page -- just bear with me,  
14 sorry -- six. It finds that the base offense level, because of  
15 the nature of this crime, it's a Hobbs Act robbery, carries a  
16 sentence -- carries a level of 20. Then 6 levels are added  
17 because a firearm was used. That's pursuant to Section  
18 2B3.1(b)(2)(b). There's then a two-level increase because of  
19 the amount of the loss that was involved in this case. It's  
20 over \$250,000. So that's a two-level increase under  
21 2B3.1(b)(7)(C). So that puts us at level 28.

22 Because you accepted responsibility, because you  
23 admitted that you are guilty, you saved the government and the  
24 court the time and resources necessary to try the case, and  
25 because you acknowledge that you are guilty, you get some

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1 credit for that. So you get three levels off. And then that  
2 then results in a total guidelines level of 25.

3 You have one prior conviction. That was from 2005  
4 when you were convicted of an assault. You were given three  
5 years probation.

6 I had a question about that. Because the crime was  
7 committed more than ten years and after that -- maybe it's not  
8 quite ten years after that.

9 Ten years would mean it doesn't get counted, right? I  
10 thought. Or maybe -- term of incarceration is when you finish  
11 the term of incarceration. The term of probation, I'm not sure  
12 if it's ten years from when you finish the term of probation or  
13 it's just ten years from the date of the sentence.

14 I don't think it makes any difference. It's still  
15 category I, no matter what. But that was one question I had.  
16 Ms. Graham, do you have any thoughts on that?

17 MS. GRAHAM: No, your Honor. I'm happy to look into  
18 it if you wish but none at the moment.

19 THE COURT: Bear with me one second.

20 MS. GRAHAM: Your Honor, the offense was in 2014.

21 THE COURT: It's 2014. That makes sense then. That's  
22 fine.

23 So, based on a criminal history category I and an  
24 offense level of 25 that yields a guidelines ranges of 57 to 71  
25 months. So a little less than five years to a month shy of six

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1 years. And that's according to the book.

2 But, as I said, I'm free to go higher or lower, as I  
3 see fit.

4 The other factors that I have to consider in deciding  
5 whether to go higher or lower include your own personal  
6 history; so, the facts and circumstances of your life, from  
7 your birth right up until now, includes things like your work  
8 history, your educational history, your family circumstances,  
9 and other stuff too. You're unique so I have to make sure I  
10 consider your unique experience. So that's one factor I have  
11 to consider.

12 Another factor I have to consider relates to the facts  
13 and circumstances of this crime. This is obviously an  
14 incredibly serious crime. And it's important that the sentence  
15 that I impose reflect the seriousness of this crime; that it  
16 promotes respect for the law, first of all, and that it also  
17 provides a just punishment for the crime. So that means I have  
18 to look at the details of this crime, not just what it's  
19 called, but what you did, what others did, what the  
20 consequences of it were, what harms resulted from it. All of  
21 that is relevant to sentencing.

22 Another factor that I have to consider is a little  
23 different than those others that I mentioned and that's  
24 referred to as deterrence sometimes. And that's the need to  
25 deter or discourage you and others from committing crimes like

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1 this in the future. It's the hope that by imposing a sentence  
2 on you in this case I will send a message to you and perhaps to  
3 other people that this just won't be tolerated and you can't do  
4 it and the hope is that people will get the message, including  
5 you, but not limited to you. The hope is that people will  
6 think twice before they engage in any kind of conduct like this  
7 and that there will be, as a result, less crime in the future.  
8 That's the hope.

9 Now I don't have a crystal ball so it's impossible for  
10 me to know exactly what the impact will be on future behavior.  
11 But I have to use my best judgment. That's something that  
12 Congress has said courts have to consider. So that's another  
13 factor I have to take into account.

14 Another factor I have to consider are your own needs  
15 while you're in custody. So some people have different health  
16 needs or mental health needs, drug treatment needs. You have  
17 some health issues different than most defendants and so I have  
18 to make sure that I consider that in fashioning a sentence and  
19 make sure that you're at a place where those needs can be  
20 addressed. So that's another factor.

21 I guess finally the last factor that I have to  
22 consider is sometimes referred to as the need to avoid  
23 unwarranted sentencing disparities between similarly situated  
24 people.

25 And what that means basically is that before I

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1 impose -- before I impose a sentence on you in this case I have  
2 to take a step back and make sure that the sentence imposed  
3 here is consistent with, is roughly in line with sentences  
4 imposed in other cases involving similar conduct and involving  
5 defendants with similar histories. Because it's important that  
6 where there are real similarities that the sentences be  
7 similar, that they not be all over the place. Because that  
8 would -- if they were all over the place, that would probably  
9 encourage disrespect for the law and make people think that the  
10 whole system is arbitrary.

11 So those are the different factors I have to consider.  
12 I mentioned these I think on the day you pled guilty. But it's  
13 good to remind you because there shouldn't be any mystery here.

14 Now the hard part is balancing these things. I have  
15 to choose a sentence that I think is appropriate in light of  
16 all these different factors. Sometimes these factors are in  
17 tension with each other. Sometimes some of these factors say a  
18 really harsh sentence is appropriate, while other factors would  
19 argue for a lenient sentence. So the balancing is really what  
20 it's all about. It's a hard thing.

21 So the way we're going to go about this is I have  
22 letters from your lawyer, from the government's lawyer. I have  
23 letters from family members and friends of yours, all of which  
24 give me a lot of insight to you. And they are very helpful. I  
25 thank those who took the time to write.

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1 I have, of course, the presentence report that gives  
2 me a lot of facts. But I'm also going to hear from the lawyers  
3 now.

4 So I'll begin with Mr. de Castro. I'll let him speak  
5 about all or any of these factors that I mentioned. I'll let  
6 him address any of the issues that are raised in the  
7 government's submission or in the presentence report. I may  
8 have some questions as we go.

9 After he's finished, I will give the government,  
10 Ms. Graham, an opportunity to speak. She can respond to  
11 Mr. de Castro. She can make her own points related to the  
12 different factors. I will give her the same opportunity that I  
13 gave Mr. de Castro. I may have questions for her too.

14 Once I've finished with them, assuming there are no  
15 victims here, because, as I said, they would have an absolute  
16 right to speak, I will then give you an opportunity to speak.  
17 You're not required to speak, but you have a right to. And  
18 you're welcome to. So I will give you a chance to do that.  
19 And then after all of that, then I will tell you the sentence  
20 that I intend to impose. I will explain my reasons. I'll  
21 check with the lawyers to make sure I haven't done something  
22 illegal or improper under the law. Assuming not, then I will  
23 formally impose the sentence.

24 So we're in no rush. We're going to take our time.  
25 This is an important day in your life, obviously, and I want to

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1 make sure that we do this carefully and thoughtfully. All  
2 right.

3 THE DEFENDANT: Okay. Thanks.

4 THE COURT: So, Mr. de Castro, I've read your  
5 submission. It's characteristically thorough. But I'm happy  
6 to hear whatever else you'd like to add.

7 MR. DE CASTRO: Judge, I don't have a terrible amount  
8 to add. I think, first, I'd like to start with, one, you see  
9 crutches here. Slightly different. He doesn't normally use  
10 crutches. And in footnote two of my submission I detailed the  
11 difficult time he's had at MCC -- well not really MCC, really  
12 at MDC. I want to first say I didn't write that footnote to  
13 criticize the MDC in any way or the MCC in any way. I think  
14 that he is having a particular difficult time in a very strange  
15 situation where he was moved to MDC, and there was this piece,  
16 one piece missing from his prosthetic that he has been  
17 struggling without. It really makes the prosthetic unstable  
18 and puts a great deal of pressure on what's remaining of that  
19 leg.

20 The reason he has crutches is because the piece  
21 finally arrived and -- they had to order a new piece. The  
22 piece finally arrived, but now the bone is so swollen and  
23 bruised right now that they want him to heal before he  
24 continues wearing the prosthetic with the piece. So I just  
25 wanted to update the court there.

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1 I did not get the court involved and I didn't think I  
2 needed to, and I also didn't get the government involved  
3 because MDC and MCC counsel were responsive. They were telling  
4 me that they were having problems. I was getting frustrated.  
5 Mr. Green was as well. But he understood the difficulties that  
6 were going on. So that's my update on his health.

7 I guess the only other thing that I would add here,  
8 Judge, are, other than in my submission, are just to highlight  
9 that -- and it goes along with his condition with his legs.  
10 The time in jail has been difficult for him. It has been a  
11 real wake-up call. He is not 47. I wrote that. He is 42.  
12 But he is an older defendant that has really been reflecting a  
13 great deal on his conduct.

14 The government's submission makes -- and I think  
15 wasn't inappropriate that I think they read my submission to  
16 mean that Mr. Green, he really regrets this last robbery. And  
17 I can see where, in reading my submission, really we  
18 acknowledge our responsibility for the others that we --

19 THE COURT: Well there is no other relevant conduct  
20 charge.

21 MR. DE CASTRO: Correct.

22 THE COURT: So I think it's -- the fact that other  
23 robberies is relevant to rebut an assertion perceived or  
24 otherwise that this was aberrant conduct, or this was something  
25 that was just sort of a one shot out of the blue. And I think



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1 that's relevant. But I guess it's careful not to turn that  
2 into a finding of additional relevant conduct because that  
3 would affect the guidelines. Every robbery would be treated as  
4 a separate -- as separate crime and a separate guidelines  
5 calculation and would be grouped separately, and that would  
6 have -- that would potentially make the guidelines go way up.  
7 So nobody has presented any hard evidence of other crimes but  
8 there seems to be a consensus or seems to be an acknowledgment  
9 that this was not the only time.

10 MR. DE CASTRO: Correct.

11 I wanted to be clear that that's not what we were  
12 saying. We weren't failing to accept responsibility for being  
13 involved in what is -- was a larger conspiracy. That's really  
14 what we meant, involved in this conspiracy. Because as the  
15 Court knows, Mr. Green was employed for the last 16 years.  
16 He's been an extraordinarily hard worker. Anybody I've spoken  
17 to, he works really hard. He's done some really difficult  
18 physical labor even with having, you know, missing one leg.  
19 And that I just -- this was -- being involved in this  
20 conspiracy was the biggest mistake of his life. He knows that.  
21 He has been really agonizing over that. And has extraordinary  
22 remorse which I will let him address the court with and I will  
23 not repeat his life history that I detailed in our submission.

24 But I would like to also address one little piece  
25 which is the attempted cooperation in that he -- there's an

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1 additional component. I mentioned that there has been sort of  
2 a little bit of blow back on that. There is a rumor that he is  
3 a cooperating witness, he is a potential testifying cooperating  
4 witness. That's obviously not the case. There -- his family  
5 has reported from Jamaica that some people have approached  
6 them. He knew that based on his attempted cooperation that  
7 that was a possibility and that was a risk and I just think the  
8 court should take into consideration because it has -- really  
9 having some lasting effects for him currently right now. As of  
10 last week he is hearing things. I have been in contact with  
11 the government. So anything I hear, they are certainly taking  
12 very seriously.

13 And it obviously raises a whole other issue, a whole  
14 other component that if he is going to be removed from the  
15 United States it creates some danger to himself, not to mention  
16 his family, many of which still reside in Jamaica.

17 Other than that, Judge, I wouldn't add, unless the  
18 Court has questions, I wouldn't add anything else other than  
19 those facts.

20 THE COURT: Okay. Thank you.

21 I have a question. It might be for both counsel.

22 At the guilty plea, when I asked Mr. Green to tell me  
23 what he did that made him guilty of this crime, he indicated  
24 that -- this is at the top of page 46:

25 A friend of mine called from New York, called me from

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1 Boston, and asked me if I could drive up. We rented a car. He  
2 didn't have a license. So we drove it up there. When I got up  
3 there, the plan was to rob somebody. And I didn't say no. I  
4 participated. I acted along with them.

5 And when I said: Wait. Understanding that they were  
6 going to be engaged in a robbery?

7 And he said: First, I didn't know until I got there.  
8 But once I got there, I didn't say no to them.

9 And so that was what was said. There was sufficient  
10 allocution for me to accept the plea. But that seems to me a  
11 little bit inconsistent with what's in the presentence report  
12 and what's in the government's sentencing submission. And it  
13 certainly seemed to be inconsistent with the notion that there  
14 were other robberies.

15 So sort of when Mr. Green knew that this was going to  
16 be a robbery is I think somewhat relevant to sentencing and  
17 whether or not he sort of soft pedaled or at least maybe  
18 overstated his lack of knowledge when he pled guilty is also I  
19 think worth knowing.

20 So I guess I want to ask each lawyer to respond to  
21 that.

22 Start with the government. Ms. Graham.

23 MS. GRAHAM: Yes, your Honor. If I could just confer  
24 with Mr. de Castro for one moment.

25 THE COURT: Yes.

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1 (Pause)

2 MS. GRAHAM: Your Honor, perhaps to put a helpful  
3 clarification on that. Our position, and we should have been  
4 more clear about this in our sentencing letter, is that  
5 certainly Mr. Green had committed prior robberies with this  
6 individual and knew that he was being asked to bring a rental  
7 car and construction vests up that would be used in a robbery.  
8 The color is that he did not know whether he himself would be  
9 actively participating in that robbery beyond that. And so  
10 that is perhaps what he meant, whether he would -- you know,  
11 whether he would actually, in fact, go to the location and  
12 assist in robbing the individual.

13 THE COURT: But there were other robberies, right?  
14 That's what you said in your letter.

15 MS. GRAHAM: Yes, your Honor.

16 THE COURT: And I don't think there's any dispute  
17 about that. So those robberies were before or after this one  
18 or both?

19 MS. GRAHAM: Those robberies were before.

20 THE COURT: Before?

21 MS. GRAHAM: Yes.

22 THE COURT: So to have engaged in prior robberies and  
23 then get a call to come up to Boston and say I didn't know  
24 until I got there that they were going to be engaged in a  
25 robbery sounds just a little misleading to me.

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1           Again, it was sufficient for an allocution because he  
2           acknowledged that at the time of the robbery he was in and  
3           aware and agreed to participate.

4           But it creates an impression in the transcript that  
5           this was something that wasn't sort of premeditated, it was  
6           fairly spur of the moment, and he was an unwitting sort of tag  
7           along until the moments before the decision was made to engage  
8           in a robbery. And that's hard to square, it seems to me, with  
9           what's in your letter and what you've just said.

10           MS. GRAHAM: Sure. If it's helpful, he was made aware  
11           on arriving in Boston, I believe the night before, that they  
12           were going to commit a robbery the next morning. So, he has  
13           not ever claimed that it was kind of a spur of the moment, get  
14           in the car and let's go. He was very much aware of the details  
15           of the plan.

16           But I understand your Honor's comments based on the  
17           statement in the allocution. Perhaps the only explanation is  
18           our legal definition of participation in a robbery is bringing  
19           the car here, bringing the construction vests, you're already  
20           participating in that conspiracy. I think lay people usually  
21           might think of knowing about and participating in the robbery  
22           as perhaps knowing the specific details and knowing that you  
23           would be kind of at the scene.

24           THE COURT: Mr. de Castro, anything you want to say?

25           MR. DE CASTRO: So the circumstances are -- I don't

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1 think that there's any real -- because in his mind it was,  
2 look, I had done robberies with this person before, it's not  
3 inconceivable that that's what's going on. It could be that he  
4 just needs the car and some items and they are going to do --  
5 maybe give you a little bit of the background. The Boston  
6 New York connection now. They're separated by -- he's very  
7 close friends with the individual we're talking about.

8 THE COURT: The individual we're talking about who  
9 drove up to Boston? There's two other individuals --

10 MR. DE CASTRO: He drove up. The coconspirator in  
11 Boston.

12 THE COURT: Okay.

13 MR. DE CASTRO: So who had been in New York. And they  
14 were very, very close. And lived together and things like  
15 that. And so they're friends.

16 And then he's asked to come up to Boston.

17 The likelihood is, Judge, that it would be to  
18 participate in something. He didn't know if he would be a part  
19 of it or if he was just asking at that moment, just at the time  
20 when he's being asked to come up to New York.

21 THE COURT: Where were the guns?

22 MR. DE CASTRO: I'm sorry. Say that again.

23 THE COURT: Where were the guns?

24 MR. DE CASTRO: In Boston.

25 THE COURT: The guns were not in the car?

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## Sentencing

1 MR. DE CASTRO: No.

2 THE COURT: They were in Boston.

3 And then what the government wrote on the first page  
4 of its letter is that defendant and his codefendant, Cleon  
5 Clarke, were recruited to commit this robbery by a  
6 coconspirator, CC1, who asked them to travel from the Bronx to  
7 Massachusetts to help CC1 with a robbery.

8 That implies that he was recruited before he came up.

9 In furtherance of the robbery, the defendant brought a  
10 rental car up from the Bronx as well as construction vests so  
11 that if the men were stopped in the course of the robbery they  
12 would appear to have a legitimate purpose for being in the  
13 area.

14 All of this implies that this was discussed before he  
15 got to Boston -- or Massachusetts, maybe not Boston.

16 MR. DE CASTRO: Our position has always been, even in  
17 our proffer sessions with the government, that it was not  
18 discussed with Garfield Green prior to him getting up to  
19 Boston. It could have been -- one issue is I don't know  
20 actually -- I know I said that he did not bring the guns up to  
21 Massachusetts. If Mr. Clarke had a gun, he did not know it.  
22 He did not have knowledge of it.

23 When they got to Boston it wasn't, as the government  
24 said, like: Okay, jump in the car, we're going to do this. It  
25 was discussed and details were described and they were talked

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## Sentencing

1 about and planned. It was not that -- all I'm saying is that  
2 from Mr. Green's perspective he was asked to come up, bring  
3 this. In his mind it was: Okay, we're probably going to be  
4 doing some crime, maybe a robbery. I don't know if I'm going  
5 to be cut into it, asked to participate in it, or if I'll have  
6 that opportunity or not. When he gets to Boston, then it's  
7 clearly discussed with him and he agrees to do it. There is no  
8 issue.

9 THE COURT: But bringing construction vests so if  
10 they're stopped they have a plausible story for being in the  
11 area. These construction vests were brought from New York?

12 MR. DE CASTRO: Yes.

13 THE COURT: So.

14 MR. DE CASTRO: That's why I said he knows that  
15 there's a probability that that's what's happening up there.  
16 Whether he's going to be participating in it, he doesn't know  
17 until he gets there, discusses it with him, they are saying --  
18 coconspirator one, who is the leader is saying: Yes, you're in  
19 essentially. Okay.

20 So he didn't -- Mr. Green is just telling you what he  
21 remembers. He's not minimizing his involvement at all from --  
22 he knew the details. He knew the plan. He knew everything  
23 that was going to happen. All Mr. Green was saying when he  
24 said to the government is that he learned it when he got to  
25 Boston.



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## Sentencing

1           And I think that makes sense. I don't think that  
2 people are necessarily going to talk about it openly. I know  
3 I've had plenty of cases where people do. But sometimes people  
4 are cautious and aren't going to say here's our plan on a phone  
5 that of course could be recorded or intercepted in some sort of  
6 way.

7           So he gets there. He runs details, and he's a willing  
8 participant. An he commits the crime. No question.

9           THE COURT: Right. I think that's hard to square with  
10 the comments -- the statements made at the guilty plea.

11           And the attempts to cooperate were before the guilty  
12 plea or after the guilty plea?

13           MR. DE CASTRO: Before.

14           THE COURT: Before.

15           All right. Ms. Graham, anything else you'd like to  
16 say?

17           MS. GRAHAM: Your Honor, we highlighted the serious  
18 nature of the crime in our sentencing submission. We'd rest on  
19 that but are happy to answer any further questions.

20           THE COURT: I wasn't sure I understood what the  
21 government's position is here. What you respectfully submitted  
22 is that a significant incarceratory sentence such as a sentence  
23 within the stipulated sentencing guidelines would be sufficient  
24 but not greater.

25           So are you asking for a guidelines sentence or are you

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1 just telling me that a guidelines sentence would be one of a  
2 range of sentences that would be sufficient.

3 MS. GRAHAM: Yes, your Honor. We're asking for a  
4 guideline sentence.

5 THE COURT: You're asking for a guideline sentence?

6 MS. GRAHAM: Yes, your Honor.

7 THE COURT: That's not the normal -- this doesn't  
8 appear to be the standard language for a guideline sentence.

9 So you're asking for a sentence within the range of 57  
10 to 71 months.

11 MS. GRAHAM: Yes, your Honor.

12 THE COURT: And that's because why.

13 MS. GRAHAM: It's because of the serious nature of the  
14 crime. This was a planned, premeditated crime in which an  
15 innocent civilian was robbed at gunpoint in an event that was  
16 very traumatizing to him.

17 Also, as we noted, and in response to defense's  
18 submission, solely as a 3553(a) factor, going to the  
19 defendant's history and characteristics, we noted the prior  
20 robberies that he had been involved in, with some same  
21 individuals. We think that a significant sentence, a guideline  
22 sentence, is appropriate here.

23 THE COURT: Okay. Thank you.

24 Is there anything else you would like to say,  
25 Mr. de Castro?

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## Sentencing

1 MR. DE CASTRO: No, Judge. Thank you.

2 THE COURT: So as I said then, Mr. Green, you have a  
3 right to address the court. It looks like you have something  
4 that you wanted to read from. You can stay seated. Just maybe  
5 pull the microphone down a bit so it's closer to your mouth.

6 THE DEFENDANT: My name is Garfield Green and I'm  
7 writing this letter to ask for leniency from the judge and the  
8 people I offended, the victims I offended, their families. I  
9 wake up everyday -- I wake up everyday and ask myself why did I  
10 make this wrong decision. Couldn't I just leave?

11 I'm sorry.

12 That would have been the right move to make. Instead  
13 I listened to a friend, someone that I thought was family, and  
14 I went along. I can tell you this is honestly the most --

15 THE COURT: Take your time. Take your time.

16 Do you need a glass of water or something? I can get  
17 you a bottle of water. Do you want to do that?

18 Take your time. Look, this is a big day for you.  
19 It's an emotional time. I understand that. It's a difficult  
20 thing to speak in court. So just catch your breath. We're in  
21 no rush. I'll get you a drink of water. Use a tissue if you  
22 need. Because I want to make sure I can hear what you're  
23 saying.

24 THE DEFENDANT: I can tell you honestly this was the  
25 biggest mistake of my life. I feel like such a fool.

1           Your Honor, at this point in my life I had everything  
2 a man could want: A good job, just purchased a house,  
3 beautiful wife, a beautiful family that loves me a lot, and I  
4 am on the verge of losing the one thing that I care about more  
5 than anything in the world, my family.

6           I would like the chance to be there for my son who was  
7 recently born who I haven't seen yet. I would like the chance  
8 to see my daughter and figure out a way to explain to her where  
9 I've been and what I've been -- and without being able -- if  
10 somebody was to teach me, to explain to me what I'm doing, the  
11 effect it would have on friends and family, this would have  
12 never happened. I'm 42 years old. I did a lot of stupid  
13 things in life. But, your Honor, this is the biggest one I've  
14 ever made in my life, for the people I've hurt, being in  
15 prison, it's not half of what they've been going through in  
16 their life. And for this I'm deeply sorry. And I promise to  
17 this court, to the people I hurt, and my family and friends,  
18 this will never, ever happen again. Please forgive me. Thank  
19 you.

20           THE COURT: Okay. All right. Let's do this. Let's  
21 take a minute because I want to make sure that Mr. Green has an  
22 opportunity to collect himself. It is, as I said, an emotional  
23 moment. It often is.

24           One question I have -- so we'll take maybe a five or a  
25 ten minute break so I can collect my thoughts and, Mr. Green,

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## Sentencing

1 you can catch your breath and so that way you'll be able to be  
2 focused when I state the sentence and explain my reasons for  
3 it, okay.

4 One question I did have for the government that I  
5 meant to ask. So I've got two defendants and a coconspirator  
6 who has not been charged as far as I know and I'm trying to get  
7 a sense of relative culpability. I'll be sentencing  
8 Mr. Clarke.

9 That was one change I guess that I would make in the  
10 presentence report, the presentence report indicates that  
11 Mr. Clarke would be sentenced on July 6. That sentencing date  
12 was moved to August 30. So he has not yet been sentenced.

13 But I guess I would like to have a sense of the  
14 government's view as to the relative culpability of those two  
15 defendants. Are they equal? I don't know that a driver is  
16 less culpable than a person who is carrying the gun when  
17 they're all in it together and they all share proceeds.

18 But was there a distinction between who got paid what?  
19 Was there a difference in role? Was there a difference in  
20 knowledge, culpability, things like that?

21 MS. GRAHAM: Yes, your Honor. Certainly the  
22 coconspirator in this case, CC1 in our sentencing submission,  
23 we believe was the most culpable. CC1 was the organizer who  
24 really did the surveillance in advance, determined the daily  
25 plan, called Mr. Clarke and Mr. Green and asked --

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1           THE COURT: Right. So he would be subject to a higher  
2 guidelines range because he'd be getting leadership or  
3 organizer points.

4           MS. GRAHAM: Yes, your Honor.

5           THE COURT: But he's not charged, as far as I know.

6           MS. GRAHAM: He is not charged in this case, your  
7 Honor.

8           THE COURT: Is he charged in some other case?

9           MS. GRAHAM: Yes, your Honor.

10          THE COURT: And then there's Mr. Clarke, who I know a  
11 little more about because I took his guilty plea, and I will be  
12 sentencing him in about a month. So relative to Mr. Clarke,  
13 how does Mr. Green fit?

14          MS. GRAHAM: Mr. Clarke -- we believe that Mr. Clarke  
15 is also more responsible than Mr. Green. Not necessarily as a  
16 leader but as someone who is certainly more active in this  
17 robbery as someone who carried a firearm and as someone who --

18          THE COURT: That's my question. The law doesn't  
19 usually make a distinction -- you've got three people. One is  
20 driving the car. The other two are doing the robbery with the  
21 guns. You don't usually get points off for being just the  
22 driver, right? Everybody is in it together and that's  
23 understood.

24          So it requires, I suppose, a little more nerve to be  
25 the person who's got the gun. There might be some people who

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## Sentencing

1 say: Well, I'll drive but I won't carry the gun. I'm not sure  
2 I would consider that to be tremendously significant.

3 But is there a difference in terms of knowledge or  
4 planning or role or percentage of the proceeds, things like  
5 that?

6 MS. GRAHAM: Certainly CC1 did get more of the  
7 proceeds.

8 THE COURT: I'm really focused on Clarke.

9 MS. GRAHAM: Of course, your Honor. I understand your  
10 point that certainly every person is instrumental, including  
11 the driver.

12 I would point out in terms of that, I think that many  
13 people when planning the roles of a robbery, certainly the  
14 people planning it may think that the person carrying the gun  
15 is a more active participant than the driver; and to that  
16 effect, Mr. Green was usually the driver in the other  
17 robberies. He did not carry a gun in those other robberies.

18 So in terms of who was more instrumental, I certainly  
19 appreciate your Honor's point and appreciate it from a  
20 guidelines perspective. Perhaps from a lay person's  
21 perspective, there is a sense that the driver is not less  
22 culpable or less instrumental but perhaps a less aggressive  
23 part of the given robbery.

24 Our understanding is that they received roughly  
25 similar proceeds from the robbery.

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## Sentencing

1           THE COURT: So let's take a short break and we'll come  
2 back in about five or ten minutes. Okay.

3           Mr. Green, I don't want to prolong this, but I do want  
4 to have a chance to collect my thoughts, to think about what  
5 you've said, to think about what the lawyers have said.

6           I always come into a sentence prepared. So I've read  
7 everything and I've thought about this for a long time as to  
8 what would be an appropriate sentence. But I always want to  
9 make sure that I'm open to hearing things that might move me  
10 one way or the other and that's, I think, important because  
11 otherwise what would be the point of hearing from the lawyers  
12 or hearing from the defendant. So I always want to remain open  
13 minded and then have a minute at least or a few minutes to  
14 reflect on what I've heard. Okay.

15           So we'll pick up again in a few minutes.

16           (Recess)

17           THE COURT: Thank you. Have a seat.

18           Thank you.

19           I understand that there's some family members of  
20 Mr. Green have arrived.

21           MR. DE CASTRO: Yes. They got here actually part of  
22 last session, but I closed the door. We were talking about  
23 some sensitive issues so his wife stayed outside.

24           THE COURT: We're not allowed to close doors unless  
25 there is a court order.



H7S9GRE1

## Sentencing

1 MR. DE CASTRO: Just the outside door was closed  
2 because we heard a lot of noise.

3 THE COURT: So who is here?

4 MR. DE CASTRO: His wife and his nephew.

5 THE COURT: Thank you for being here. Please have a  
6 seat.

7 I'll tell you what you've missed, because I think  
8 obviously this sentencing affects you as much as anyone. So  
9 we've gone through the sentencing guidelines which are part of  
10 sentencing. It's a big book that, at the risk of repeating  
11 myself, I'll just say is put out by a commission. And judges  
12 like me have to follow -- not follow, but consider the book.  
13 And so for every crime the judge makes a calculation and  
14 determines what the commission that prepares this book believes  
15 to be an appropriate sentence. In this case, the sentence that  
16 is called for by the guidelines book is 57 to 71 months, so a  
17 little less than five to a little less than six years.

18 There are other factors also that I have to consider  
19 that include Mr. Green's personal history, that include the  
20 facts and circumstances of the crime, that include the need to  
21 deter criminal conduct, that include considering Mr. Green's  
22 special needs to the extent he has needs that have to be  
23 addressed in prison, and also the need to avoid disparities  
24 between defendants who are similar. It's important that there  
25 be some consistency.

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## Sentencing

1           So I want to make sure that you're aware of what goes  
2 on here because, as I said, it's important that this sentencing  
3 take into account how the sentence will impact you and the  
4 kids, because that's a sad fact. I mean the reality is that  
5 many defendants have children, and children are affected by  
6 these sentences. And it's not fair because they're innocent  
7 victims. And most of them can't understand what's going on.  
8 Certainly the kids here don't understand what's going on. But  
9 certainly your daughter understands that she's missing her  
10 father and that's a real hardship. That's a real suffering.

11           So I say it not because it's unusual. It's all too  
12 usual. I say it because it should be said. It should be  
13 acknowledged that this sentence will affect them. It's not  
14 something that I don't consider. It's not something that I  
15 think is insignificant. I think it's very significant. It's  
16 just, unfortunately, a fact of life. Individuals are connected  
17 to other individuals. Defendants have families and children  
18 and people who rely on them and people who suffer as a result  
19 of the punishment that requires them to be separated. And I  
20 wish there was something I could do to make that not the case  
21 but that, sadly, is just the reality. So I want you to just  
22 know I'm aware of it.

23           I want to thank you for writing letters. Letters like  
24 the ones you wrote are very helpful to give me a sense of the  
25 person I'm sentencing. I don't know Mr. Green well. I have

H7S9GRE1

## Sentencing

1 seen him a couple of times here in court. I've read about him.  
2 I've read the presentence report that includes a lot of  
3 information, some of it based on interviews and conversations  
4 with family members and friends and coworkers. And then I've  
5 read letters like the ones that were submitted by  
6 Mr. de Castro, who is a very fine lawyer and very thorough  
7 lawyer. So he's always careful to provide a full picture of  
8 the defendant. And I think one of the things that was said in  
9 the letter -- in the letters a few times by various people was  
10 the hope that my sentence would consider the whole person, not  
11 just this crime, but the whole person. And that's a fair hope.  
12 I mean I think that's a reasonable request. And that's part of  
13 it. I have to consider the whole person. I'm not sentencing  
14 just one act. I'm sentencing the person, recognizing that  
15 everybody is complicated. Everybody has contactor traits that  
16 are admirable and some that are less admirable. People make  
17 mistakes but that doesn't mean they're not capable of great  
18 kindness and great charity and great love. And I think it's a  
19 testament to Mr. Green that people were willing to speak about  
20 that in letters.

21 So my role now is to impose a sentence and Mr. Green.  
22 I think has been waiting a while and he's probably anxious to  
23 get this going because it's not fun to live in suspense as to  
24 what the sentence will be. I understand that. But I have to  
25 give my reasons. Because in our system judges have to give

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## Sentencing

1 reasons. They don't just impose a sentence and storm off.  
2 They have to explain it in the hope that it will make sense to  
3 a defendant, that it will make sense to the defendant's family  
4 and to the larger community, it will make sense to the public.  
5 And so we do it here in open court on the record. There's a  
6 transcript that anybody could look at. So it's important that  
7 we do it carefully and honestly and transparently. So that's  
8 why we do it this way.

9           So I always begin and I usually begin with  
10 acknowledging the humanity of the person. Mr. Green is -- I  
11 think is a good person. I don't think there's any way I could  
12 disagree with that. The letters say that. His remorse, his  
13 remarks today, which were spoken through choked tears and was  
14 obviously very emotional, I think reflect that this is a guy  
15 who has good qualities and is -- has lived in many ways an  
16 admirable life. He's worked very hard. He's raised a family.  
17 He's been a good spouse. He's been a good friend. He's a kind  
18 and generous person who has made a difference in the lives of  
19 people around him. That's reflected in the letters. And I  
20 credit that.

21           And that's not true with everybody. There are a lot  
22 of defendants who don't have that kind of support or they don't  
23 include letters that give me those sorts of insights into their  
24 character. So that's a good thing. That's to your credit.

25           At the same time I have to think about the details of

H7S9GRE1

## Sentencing

1 this crime. And this is a crime that is I mean just so awful.  
2 It's a crime that involved traveling out of state to go from  
3 New York to Massachusetts, to work with other people to rob an  
4 armored car, an armored car carrying cash that was going to  
5 fill ATMs. And the plan was to basically rob the guy driving  
6 the truck at gunpoint. That's what happened. Not Mr. Green  
7 but his two coconspirators got out of his car, the car he was  
8 driving, with guns, approached the driver of the armored car,  
9 put a gun to his head, basically ordered him into the back of  
10 that car obviously with the implicit threat that if he didn't  
11 comply he would be killed. And then money was stolen from the  
12 truck that amounted to \$250,000. That was a broad daylight,  
13 armed robbery that involved potential for death. No question  
14 about it. If an undercover cop had come upon the scene and  
15 decided I'm going to stop this in its tracks, or if the armed  
16 armored car driver decided to resist or decided that he could  
17 get out of this, who knows what could have happened. Somebody  
18 could have gotten killed. That's what happens with guns. An  
19 innocent bystander, a small child, the armored car driver,  
20 anybody could have been killed.

21 And so that's -- that's about as bad as it comes. And  
22 that's a crime that has to be punished. And it's also worth  
23 considering that the punishment contemplated here for the  
24 robbery would normally be enhanced by the imposition of a  
25 mandatory consecutive sentence because Congress has said gun

H7S9GRE1

## Sentencing

1 crimes are so bad that they have to be punished extra. And so  
2 they've written a law that says somebody who commits a crime of  
3 violence like this robbery with a gun in which the gun is  
4 brandished, pointed at somebody, put against their head, well  
5 that's going to carry extra penalties and, according to the  
6 law, there would be an extra penalty of seven years on top of  
7 whatever sentence I impose on the robbery.

8 Now, Mr. Green was charged with that crime. He  
9 ultimately, as part of a plea deal with the government that was  
10 accepted by me, he didn't plead to that and that -- the  
11 government has agreed to dismiss that count. But that's a  
12 savings of seven years off the top. If the case had gone to  
13 trial or if the government had not been willing to come off of  
14 that count, then we'd be talking about a much higher guideline  
15 sentence than what we're talking about here. And so I just  
16 think that that's also worth considering, that this plea deal  
17 does carry within it significant benefits that have already  
18 been realized.

19 I also have to say that I can't ignore the fact that  
20 this is not an isolated incident. If this were the first time  
21 and the only time that Mr. Green was ever involved in something  
22 like this, then I might be inclined to go below the guidelines.  
23 But where it was -- it's been reported and not disputed that  
24 there were multiple other incidents like this -- I don't know  
25 the details, I'm not considering them as relevant conduct, but

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## Sentencing

1 I think they certainly are relevant to whether or not this is  
2 aberrant conduct or something that is isolated to the point  
3 where there should be a below guidelines sentence. I think  
4 that's a fair consideration. And the fact that there were  
5 multiple other incidents suggests to me a below guideline  
6 sentence is not appropriate.

7 Now Mr. Green has worked his whole life. That's not  
8 true of every defendant. That's admirable.

9 I got a letter from one of your coworkers who speaks  
10 about your being a colleague and a stand-up guy and a hard  
11 worker. Your wife says the same thing, talks about the work  
12 that you've done for free and your commitment to being a good  
13 employee and a good worker. And that is really admirable.

14 (Continued on next page)

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H7S3GRE2

## Sentencing

1           THE COURT: You are a union member. You were making a  
2 decent living.

3           And that's another thing I just don't understand here.  
4 According to the presentence report, your household income,  
5 that's between what you were making and what I guess your wife  
6 was making, was about \$180,000 a year in recent years. That's  
7 a good living. People who make that kind of money coming in  
8 don't entertain getting involved in armed robberies. So I  
9 don't understand it. That's basically as much as I make.

10           And I don't fully understand the relationship between  
11 you and Mr. Clarke and you and the other individual who is  
12 identified as Co-Conspirator 1. That's part of it, I'm sure.  
13 Those relationships were part of what induced you to get  
14 involved here.

15           But you knew better. You know better. You're better  
16 than this. You're smarter than this. To do this not once, but  
17 multiple times, you had to have known that getting caught would  
18 result in years in jail. You had to have understood that.

19           My heart breaks for your family because they deserve  
20 better, and they're suffering. But the reality is, I mean,  
21 people with young families, people who depend on them, that  
22 alone is enough to prevent them from getting involved in crimes  
23 like this. The thought of an arrest and a separation are  
24 enough to make people who care about their families not get  
25 involved in this kind of conduct.



1           So again, I'm sympathetic to your family and I'm  
2           impressed with your commitment to them, and your being a good  
3           father and a good spouse. But, it is inexplicable how you  
4           could jeopardize all that to participate in this crime and  
5           others like it.

6           So, the bottom line, where do I come out, what is an  
7           appropriate sentence. I've thought about this for days, for  
8           weeks. I've really thought about this a long time. I look at  
9           these photos of your family, I read these letters.

10          But I also then come back to reading about the crime  
11          and reading about the victim and reading about the guns and  
12          what could have happened. And I just have to say that I think  
13          a sentence of anything less than five years is just not  
14          appropriate. That's as low as I can go in good conscience.  
15          Because it is an unspeakably violent crime and it was not  
16          isolated.

17          That's the sentence I intend to impose. A term of  
18          incarceration of five years with credit for time you've already  
19          served, to be followed by a term of supervised release with  
20          conditions that are set forth in the presentence report.

21          I'm also going to order restitution in the amount of  
22          \$252,000 to the victims of this crime as well as forfeiture in  
23          the same amount. I'm not going to impose a fine. I will  
24          impose a \$100 special assessment.

25          That's the sentence I intend to impose. Is there any

H7S3GRE2

## Sentencing

1 legal impediment to my imposing that sentence?

2 MS. GRAHAM: I didn't hear the number of years of  
3 supervised release.

4 THE COURT: I'm sorry. Three years of supervised  
5 release, which is the maximum.

6 MS. GRAHAM: Thank you.

7 THE COURT: Okay.

8 MR. DE CASTRO: No legal impediment, Judge.

9 THE COURT: So, you can remain seated. I'm now going  
10 to formally impose the sentence.

11 I'm sentencing you, Mr. Green, to a term of  
12 imprisonment of five years with credit for the time you've  
13 already served, to be followed by a term of supervised release  
14 of three years with the following mandatory, standard and  
15 special conditions.

16 The mandatory conditions are that you will not commit  
17 another federal, state or local crime of any kind. That you  
18 will not possess a firearm of any kind or a destructive device.  
19 You cannot do that. That's a crime if you were to possess a  
20 firearm. You may not use or possess an illegal substance. A  
21 controlled substance or prescription drugs for which you don't  
22 have a prescription.

23 You will report to probation, you will also provide  
24 DNA as requested by law enforcement, and you'll also comply  
25 with any conditions and requirements of immigration officials,

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## Sentencing

1 since it is possible you could be deported. I don't know, but  
2 it's certainly possible.

3 In addition, there are standard conditions that are  
4 imposed in virtually every case, there are 13 in all. I impose  
5 those here along with the following special conditions.

6 You will report to probation within 24 hours of your  
7 release from custody. The only exception is if you get out on  
8 a Friday or weekend, or the night before a holiday, then you  
9 can report the next business day. You'll be supervised in the  
10 district of residence, which I assume that will be the Bronx.  
11 Is that where you're planning to live? Or Upstate. Florida,  
12 New York.

13 In addition, in the event that the probation officer  
14 believes there is evidence of a crime or evidence of a  
15 violation of supervised release, you have to then allow for a  
16 search of your premises, any apartment that you're living in,  
17 any premises you control. Your work space, car, electronic  
18 devices, you have to allow those to be searched in the event  
19 that the probation officer believes there is evidence of a  
20 crime or evidence of a violation of supervised release. You  
21 also have an obligation to let the people with whom you reside,  
22 any adults, you have to let them know you're subject to that  
23 search requirement.

24 You may not open lines of credit, you can't take out  
25 mortgages or take out a bank loan, open a credit card account,

H7S3GRE2

## Sentencing

1 without the permission of the probation officer, and you also  
2 have an obligation to provide truthful information about your  
3 economic activity, your income, your spending.

4 In addition, as I said, I'm not going to impose a  
5 fine. I will order restitution in the amount of \$252,000 to  
6 the victims who are set forth on the restitution order.  
7 They'll also be set forth on a sealed page on the judgment. It  
8 is the victims of this crime. And then there will be  
9 forfeiture in the amount of \$252,000, that's joint and several  
10 for the crime that was committed here with two co-conspirators.  
11 But basically, if you pay the restitution, that will pay down  
12 the forfeiture. You'll get credit for that, but there will be  
13 interest on that.

14 I'm not going to impose a fine but I will impose a  
15 \$100 special assessment.

16 I should tell you that you have a right to appeal this  
17 sentence. It may be that your plea agreement waived that  
18 right. I think it did, because I sentenced you within the  
19 range that you agreed to, and as a result, you agreed you  
20 wouldn't appeal or otherwise challenge that sentence. But, if  
21 you think you have a basis to appeal and you wish to do so, you  
22 have to file a notice of appeal within two weeks. So talk to  
23 Mr. De Castro about that. He'll help you file a notice of  
24 appeal if that's something you want to do.

25 There are open counts that you wish to move for

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## Sentencing

1 dismissal?

2 MS. GRAHAM: Yes, your Honor. We move to dismiss open  
3 counts at this point.

4 THE COURT: So I will dismiss the open counts which  
5 are Counts One and Three of the indictment.

6 Is there anything else we should cover today, Mr. De  
7 Castro?

8 MR. DE CASTRO: Just the recommendation, Judge, he be  
9 housed as close as possible to Florida, New York, should the  
10 BOP --

11 THE COURT: I assume Otisville is probably the  
12 closest. I'm happy to make that recommendation. Obviously,  
13 Mr. Green has some medical issues that would need to be  
14 addressed, but I think probably Otisville is capable of  
15 addressing those concerns.

16 So I'll make the recommendation for Otisville. It is  
17 important that you be close to your family. I can't order  
18 that, but I'll recommend it in the strongest possible terms.

19 So Mr. Green, it's a tough sentence and I understand  
20 that. And it's very tough on your family and my heart goes out  
21 to them. I've explained my reasons and people can disagree. I  
22 respect that. At the very least, I hope you and your family  
23 leave here believing at least it was a careful system. It was  
24 a fair system. It was one that tried to be respectful of  
25 everybody. And that's what I've certainly endeavored to do.

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## Sentencing

1 I meant what I said. I think you are a good man. You  
2 are a young man, too, so you've got a lot left in your life.  
3 You've got to serve this time. You've got to be punished for a  
4 serious crime. But, this crime doesn't define you. There is  
5 more to you than this. And I think you have the rest of your  
6 life to demonstrate that for your sake, for the sake of your  
7 family, and I hope you'll do that, because you deserve it. You  
8 deserve a life that's long and happy and healthy. That you're  
9 there to provide for your family. So I hope you'll do that. I  
10 hope your family will continue to support you. It is really  
11 important that they be there for you.

12 I hope you'll continue to support your kids. This can  
13 be a very difficult time for them. So do everything you can to  
14 be there for them as a father.

15 Was there something else you wanted to say?

16 MR. DE CASTRO: One thing, Judge, I wanted to address  
17 what may be a request for a temporary sealing on the aspects of  
18 this proceeding that addressed his attempt at cooperation.

19 THE COURT: So the transcript?

20 MR. DE CASTRO: And my original submission which I  
21 didn't do on the docket.

22 THE COURT: So why don't you order a copy of the  
23 transcript, you and the government, review the transcript. If  
24 you have redactions that you think would be appropriate in  
25 light of discussions of cooperation, you can send that to me.

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## Sentencing

1 If I give you two weeks, is that sufficient?

2 MR. DE CASTRO: That's fine.

3 THE COURT: And once I see what you've proposed, I'll  
4 then make a determination as to whether the redactions are  
5 appropriate. I'll issue an order. And I think I'll seal the  
6 other submission that you sent to me which talks about  
7 cooperation.

8 MR. DE CASTRO: Right.

9 THE COURT: But there is already a docketed version of  
10 a sentencing submission that doesn't talk about cooperation.

11 MR. DE CASTRO: Okay. Thank you, Judge.

12 THE COURT: Two weeks. And then run it by Ms. Graham  
13 before you send it to me. Hopefully it will be on consent.

14 MS. GRAHAM: If we could also just seal my original  
15 sentencing submission. Again, there is a redacted one filed on  
16 ECF.

17 THE COURT: There is a presumption of open records,  
18 Mr. Green, and that means, generally speaking, anybody can come  
19 into this courthouse and watch a proceeding. And anybody can  
20 get access to a transcript of what took place in a courtroom.  
21 However, there are situations where it is appropriate to seal  
22 things. So if there is references to cooperation, that can  
23 sometimes pose a risk to safety.

24 And so, given what's been represented here, I think  
25 the presumption of open records has been overcome by the need

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## Sentencing

1 to ensure your safety and the safety of people close to you,  
2 and not to disclose your attempts to cooperate. If there are  
3 future attempts at cooperation, then that obviously would be  
4 the subject of a Rule 35, and that's always an option.

5 But for now, that's the sentence of the Court. Good  
6 luck to you and to your family. Thanks very much.

7 And let me thank the court reporter. Let me thank the  
8 marshals as well. Have a good day.

9 (Adjourned)

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